

REMARKS

Claims 57-67 and 69-72 are now presented for examination, of which Claims 57, 58, 60, 63-66, 71, and 72 are independent.

Applicants note with appreciation the allowance of Claims 58, 60-62, 66, 67, and 69-72.

Claims 57, 59, and 63-65 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,340,747 to Eden.

Claim 57 is directed to a microbiological testing apparatus, having an incubation chamber. The chamber includes a carousel assembly, an enclosure, a drive system, a heating unit, and a temperature controller. The carousel assembly is adapted to mount a plurality of test panels each having a plurality of wells for receiving a test inoculum fluid for producing a reaction. The enclosure surrounds the carousel assembly and prevents intrusion of ambient light into the incubation chamber, and has a door for providing access to the carousel assembly. The drive system continuously rotates the carousel assembly to directly position the test panels for testing by the diagnostic microbiological testing apparatus. The heating unit heats the incubation chamber, and the temperature controller controls the heating unit to maintain the temperature of the incubation chamber within a predetermined temperature range.

Notably, in Claim 57, the carousel is continuously rotated by the drive system to directly position the test panels for testing. As explained in further detail below, nothing in Eden would teach or suggest these features.

Eden, as understood by Applicants, relates to a diagnostic microbiological testing apparatus and method. Fig. 2 of Eden shows an apparatus 10 which includes a

plurality of test trays 11 contained within a carousel 14. The carousel 14 is a rotary table rotated by an actuating and indexing mechanism 16. The carousel 14 is intermittently and sequentially rotated to place one of the test trays 11 proximately to a detection area, but not directly into the detection area. After the rotation stops, a reciprocating arm (not the carousel), directly positions the test tray into and out of the detection area 18. (See col. 4, line 66, to col. 15, line 12, and col. 7, lines 10-18 of Eden.) In this way, the rotation starts and stops in order to test each tray, and the tray does not itself rotate through the detection area 18.

The Office Action does not point out which portion of Eden teaches or suggests continuously rotating a carousel. Indeed, the Office Action makes no mention of the feature of Claim 57 in which the carousel is continuously rotated by the drive system.^{1/}

Nothing in Eden would teach or suggest continuously rotating a carousel, or that this rotation is used to directly position the panel for testing, as recited in Claim 57. Accordingly, Claim 57 is believed to be patentable over Eden.

Claim 59 is dependent from Claim 57 discussed above and is therefore believed patentable for the same reasons.

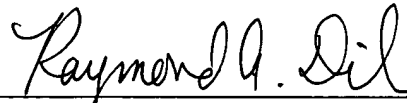
Independent Claims 63-65 each include features which are similar to those discussed above in connection with Claim 57. For example, Claims 63-65 each recite continuously rotating a carousel to position a test panel between a light source and a light detection unit. Accordingly, Claims 63-65 are believed to be patentable for at least the same reasons as discussed above in connection with Claim 57.

^{1/}In a telephone conference with the undersigned attorney on July 13, 2005, the Examiner agreed that Eden does not teach or suggest continuously rotating a carousel.

In view of the foregoing remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

A handwritten signature in cursive script, reading "Raymond A. DiPerna", written over a horizontal line.

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